

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **WESTERN DISTRICT OF WASHINGTON**
10 **AT SEATTLE**

11 DOWNTOWN ACTION TO SAVE HOUSING,
12 a Washington non-profit corporation,

13 Plaintiff,

14 v.

15 MIDLAND CORPORATE TAX CREDIT XIV,
16 LP, MIDLAND CORPORATE TAX CREDIT
17 XVI, LP, MIDLAND CORPORATE TAX
18 CREDIT VII, LP, and BFIM SPECIAL
19 LIMITED PARTNER, INC., collectively
20 Delaware partnerships located in Massachusetts,

21 Defendants.

No. 2:18-cv-138

COMPLAINT AND JURY
DEMAND

22 COMES NOW Plaintiff Downtown Action to Save Housing, a Washington non-profit
23 corporation, by and through its undersigned attorneys and for its Complaint against Defendants
24 Midland Corporate Tax Credit XIV, LP, Midland Corporate Tax Credit XVI, LP, Midland
25 Corporate Tax Credit VII, LP, and BFIM Special Limited Partner, Inc., which are each
Delaware partnerships located in Massachusetts, states and alleges as follows:

I. PARTIES, JURISDICTION AND VENUE

1
2 1. This action seeks, among other things, a declaration of the rights and
3 obligations of parties to three limited partnership agreements, all of which concern limited
4 partnerships formed in connection with the development, finance, construction, ownership and
5 operation of affordable housing developments, specifically apartment complexes, to be
6 managed and run by Downtown Action to Save Housing (“**D.A.S.H.**”) as the General Partner
7 of the limited partnerships.
8

9 2. D.A.S.H. is a well-established, long-standing, and well respected non-profit
10 corporation organized under the laws of the State of Washington, with a principal place of
11 business in Bellevue, Washington, whose mission is to create and preserve affordable
12 communities for a variety of income levels with the goal of financial advancement and
13 sustainability for individuals and families.
14

15 3. In each of the three limited partnership agreements at issue here, D.A.S.H. is
16 designated as the General Partner and has, in fact, been the General Partner of the limited
17 partnerships.
18

19 4. The three limited partnership agreements at issue concern, respectively, the
20 following limited partnerships: (1) Kenmore Senior Associates Limited Partnership
21 (“Kenmore Senior”); (2) Kenmore Family Associates Limited Partnership (“Kenmore
22 Family”); and (3) Mountain View Family Associates Limited Partnership (“Mountain View
23 Family”). Kenmore Senior, Kenmore Family and Mountain View Family are collectively
24 referred to hereafter as the “Partnerships.”
25

1 5. Each of the Partnerships own and operate separate, distinct affordable housing
2 developments, or apartment complexes, specifically as follows: (1) Kenmore Senior owns and
3 operates Heron Landing Senior Apartments (“Heron Landing”); (2) Kenmore Family owns
4 and operates Heron Run Apartments (“Heron Run”); and (3) Mountain View Family owns and
5 operates Mountain View Apartments (“Mountain View”). Heron Landing, Heron Run and
6 Mountain View are collectively referred to hereafter as the “Apartment Complexes.”
7

8 6. Heron Landing is located in Kenmore, Washington, which is in King County;
9 Heron Run is located in Kenmore, Washington, which is in King County; and Mountain View
10 is located in Tukwila, Washington, which is in King County.

11 7. Midland Corporate Tax Credit XIV, LP is a limited partnership located in
12 Boston, Massachusetts and is organized pursuant to the laws of the State of Delaware
13 (“Midland XIV”).
14

15 8. Midland XIV is a Limited Partner in Kenmore Senior.

16 9. Midland Corporate Tax Credit XVI, LP is a limited partnership located in
17 Boston, Massachusetts and is organized pursuant to the laws of the State of Delaware
18 (“Midland XVI”).
19

20 10. Midland XVI is a Limited Partner in Kenmore Family.

21 11. Midland Corporate Tax Credit VII, LP is a limited partnership located in
22 Boston, Massachusetts and is organized pursuant to the laws of the State of Delaware
23 (“Midland VII”).
24

25 12. Midland VII is a Limited Partner in Mountain View Family.

1 13. BFIM Special Limited Partner, Inc., which is (upon information and belief) a
2 successor to Midland Special Limited Partner, Inc., (“BFIM”) is a corporation located in
3 Boston, Massachusetts and is organized pursuant to the laws of the State of Delaware.

4 14. BFIM is a Special Limited Partner in the Partnerships. BFIM, Midland XIV,
5 Midland XVI and Midland VII are collectively referred to hereafter as the “Investment
6 Partnerships.”

7 15. BFIM is, upon information and belief, affiliated with Boston Financial
8 Investment Management, which is located in Boston, Massachusetts and manages
9 approximately \$8.5 billion in financial investments comprising over 1,450 apartment
10 complexes and 140,000 apartment units.

11 16. Upon information and belief, Boston Financial Investment Management—who
12 manages 126 corporate investor funds; 150 institutional investors—controls the Investment
13 Partnerships, which include corporate and/or institutional tax credit investors.

14 17. The matter in controversy exceeds the sum of \$75,000.00, exclusive of interests
15 and costs, and is between citizens of different States; thus, there is complete diversity in this
16 action.

17 18. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1332(a) and 2201(a).

18 19. A substantial part of the events or omissions giving rise to D.A.S.H.’s claims
19 occurred in this Judicial District, and the property that is the subject of this action is situated in
20 this Judicial District.

21 20. Venue is appropriate in this Judicial District pursuant to 28 U.S.C. §
22 1391(b)(2).

II. FACTUAL ALLEGATIONS

A. The Low-Income Housing Tax Credit Program.

21. The low-income housing tax credit (“Tax Credit”) is a federal tax credit that is generated from certain multi-unit housing projects that satisfy a number of requirements, that include, but are not limited to, an agreement by the property owner to only rent certain units to households with incomes below certain limits at rents that do not exceed certain federally-mandated limits for a period of at least 15 years after the Property is placed in service (the “Compliance Period”).

22. The Tax Credit program is governed by Section 42 of the Internal Revenue Code, certain Treasury Regulations, guidance from the Treasury Department and the Internal Revenue Service, and state-specific procedures contained in various documents adopted by designated housing agencies in each state (collectively, the “Tax Credit Rules”).

23. In a typical low-income housing project, the project owner is organized as a limited partnership or limited liability company (here, the Partnerships), a developer (which may be a for-profit or non-profit organization, here D.A.S.H.) acts as General Partner or Managing Member of the owner entity, controlling the day-to-day operations of the project, and a third-party tax credit investor is admitted as a Limited Partner or an Investor Member (here, the Investment Partnerships), agreeing to contribute capital to the owner entity (the Partnerships) in exchange for an allocation of the Tax Credits (and related tax losses) available to the project owner (the Partnerships).

1 24. The Tax Credit Rules provide that only the project owner of a qualified low-
2 income housing project can qualify for Tax Credits, and only if the project owner meets
3 certain terms and conditions.

4 25. The project owner collects the Tax Credits during the fifteen-year Compliance
5 Period. After the end of the Compliance Period, Tax Credits are no longer available. As a
6 result, by the end of the Compliance Period, the investor member or limited partner has
7 realized the vast majority of economic benefits it bargained for and expected from the project.
8

9 26. A purchase or buyout option is often one of the primary economic incentives
10 for the developer or general partner in a typical low-income housing project. While the
11 investor member or limited partner receives a substantial yearly return on its investment over
12 many, many years in the form of Tax Credits and other economic benefits, including tax losses
13 from the owner entity, the developer or general partner provides development and
14 management services to the project during the Compliance Period for modest fees; thus
15 making the purchase or buyout option a primary economic incentive and benefit.
16

17 27. The developer undertakes its investment of time, resources and money, as well
18 as its duties and obligations as general partner, with the expectation that it will have the option
19 to acquire the limited partner or investor member's interests in the operation of the business
20 (here, the Partnerships) as an on-going concern or acquire the real estate itself at the end of the
21 Compliance Period.
22

23 28. In this case, D.A.S.H.—in furtherance of its non-profit mission to create,
24 sustain and preserve affordable housing for communities in desperate need of affordable
25 housing—invested in the Partnerships in exchange for certain option rights (specifically

1 Buyout Options) and it has dutifully served as the General Partner of the Partnerships with
2 these understandings and expectations.

3 29. Without the rights afforded to it through the Buyout Options, D.A.S.H. would
4 have much less incentive to participate in the development of the low-income housing
5 developments and would be deprived of an important right to which the Investment
6 Partnerships had agreed from inception of the Partnerships.
7

8 **B. The Partnerships and Apartment Complexes.**

9 **1. Kenmore Senior and Heron Landing.**

10 30. In 1998, Kenmore Senior was formed with D.A.S.H. as the General Partner.
11

12 31. Midland XIV and BFIM's predecessor, Midland Special Limited Partner, Inc.,
13 collectively invested \$2,369,686 in Kenmore Senior so that D.A.S.H. could, on behalf of
14 Kenmore Senior as its General Partner, finance, develop, and construct Heron Landing.

15 32. In exchange, Midland XIV and Midland Special Limited Partner, Inc. were to
16 receive, collectively, \$2,999,700 in Tax Credits and other benefits, including potential tax
17 losses and other incidental benefits.
18

19 33. Upon information and belief, the allocation and receipt of the Tax Credits and
20 potential tax losses were the material motivating factors for Midland XIV and Midland Special
21 Limited Partner, Inc.'s investment in Kenmore Senior.

22 34. Upon information and belief, the pricing model and related underwriting
23 assumptions or considerations associated with Midland XIV and Midland Special Limited
24
25

1 Partner, Inc.'s investment decision considered only the economic benefit of the Tax Credits
2 and potential tax losses.

3 35. Since the formation of Kenmore Senior, D.A.S.H. has successfully operated
4 Heron Landing, and Midland XIV and Midland Special Limited Partner, Inc. (or BFIM as its
5 successor) collectively have received \$2,999,700 in Tax Credits, which provides a dollar for
6 dollar income tax benefit, and \$2,659,904 in tax losses, which provides, upon information and
7 belief, an income tax benefit of approximately 35% of this amount.

9 36. Attached as **Exhibit A** is a true and correct copy of the operative partnership
10 agreement for Kenmore Senior, which is the Kenmore Senior Associates Limited Partnership
11 Third Amended and Restated Agreement of Limited Partnership (the "Kenmore Senior
12 Partnership Agreement").

13 37. Pursuant to Section 8.20 of the Kenmore Senior Partnership Agreement,
14 D.A.S.H. has a Buyout Option allowing it to purchase Midland XIV and Midland Special
15 Limited Partner, Inc.'s (or BFIM as its successor) entire interests in Kenmore Senior.

17 38. Pursuant to Section 8.20(b), D.A.S.H. may exercise this Buyout Option after
18 expiration of the Compliance Period and for a period of one (1) year thereafter (the "Kenmore
19 Senior Option Period").

20 39. The Compliance Period for Kenmore Senior ended on December 31, 2016.

21 40. D.A.S.H. exercised its Buyout Option during the Kenmore Senior Option
22 Period.
23

24 **2. Kenmore Family and Heron Run.**

25 41. In 1998, Kenmore Family was formed with D.A.S.H. as the General Partner.

1 42. Midland XVI and BFIM's predecessor, Midland Special Limited Partner, Inc.,
2 collectively invested \$2,226,441 in Kenmore Family so that D.A.S.H. could, on behalf of
3 Kenmore Family as its General Partner, finance, develop, and construct Heron Run.

4 43. In exchange, Midland XVI and Midland Special Limited Partner, Inc. were to
5 receive, collectively, \$2,759,724 in Tax Credits and other benefits, including potential tax
6 losses and other incidental benefits.

7 44. Upon information and belief, the allocation and receipt of the Tax Credits and
8 potential tax losses were the material motivating factors for Midland XVI and Midland Special
9 Limited Partner, Inc.'s investment in Kenmore Family.

10 45. Upon information and belief, the pricing model and related underwriting
11 assumptions or considerations associated with Midland XVI and Midland Special Limited
12 Partner, Inc.'s investment decision considered only the economic benefit of the Tax Credits
13 and potential tax losses.

14 46. Since the formation of Kenmore Family, D.A.S.H. has successfully operated
15 Heron Run, and Midland XVI and Midland Special Limited Partner, Inc. (or BFIM as its
16 successor) collectively have \$2,759,724 in Tax Credits, which provides a dollar for dollar
17 income tax benefit, and \$2,231,436 in tax losses, which provides, upon information and belief,
18 an income tax benefit of approximately 35% of this amount.

19 47. Attached as **Exhibit B** is a true and correct copy of the operative partnership
20 agreement for Kenmore Family, which is the Kenmore Family Associates Limited Partnership
21 Third Amended and Restated Agreement of Limited Partnership (the "Kenmore Family
22 Partnership Agreement").

1 48. Pursuant to Section 8.20 of the Kenmore Family Partnership Agreement,
2 D.A.S.H. has a Buyout Option allowing it to purchase Midland XVI and Midland Special
3 Limited Partner, Inc.'s (or BFIM as its successor) entire interests in Kenmore Family.

4 49. Pursuant to Section 8.20(b), D.A.S.H. may exercise this Buyout Option after
5 expiration of the Compliance Period and for a period of one (1) year thereafter (the "Kenmore
6 Family Option Period").

7 50. The Compliance Period for Kenmore Family ended on December 31, 2016.

8 51. D.A.S.H. exercised its Buyout Option during the Kenmore Family Option
9 Period.
10

11 **3. Mountain View Family and Mountain View.**

12 52. In 2000, Mountain View Family was formed with D.A.S.H. as the General
13 Partner.
14

15 53. Midland VII and BFIM's predecessor, Midland Special Limited Partner, Inc.,
16 collectively invested \$2,339,765 in Mountain View Family so that D.A.S.H. could, on behalf of
17 Mountain View Family as its General Partner, finance, develop, and construct Mountain View.

18 54. In exchange, Midland VII and Midland Special Limited Partner, Inc. were to
19 receive, collectively, \$2,999,700 in Tax Credits and other benefits, including potential tax
20 losses and other incidental benefits.
21

22 55. Upon information and belief, the allocation and receipt of the Tax Credits and
23 potential tax losses were the material motivating factors for Midland VII and Midland Special
24 Limited Partner, Inc.'s investment in Mountain View Family.
25

1 56. Upon information and belief, the pricing model and related underwriting
2 assumptions or considerations associated with Midland VII and Midland Special Limited
3 Partner, Inc.'s investment decision considered only the economic benefit of the Tax Credits and
4 potential tax losses.

5 57. Since the formation of Mountain View Family, D.A.S.H. has successfully
6 operated Mountain View, and Midland VII and Midland Special Limited Partner, Inc. (or
7 BFIM as its successor) collectively have received \$2,999,700 in Tax Credits, which provides a
8 dollar for dollar income tax benefit, and \$2,059,167 in tax losses, which provides, upon
9 information and belief, an income tax benefit of approximately 35% of this amount.

10 58. Attached as **Exhibit C** is a true and correct copy of the operative partnership
11 agreement for Mountain View Family, which is the Mountain View Family Associates Limited
12 Partnership Amended and Restated Agreement of Limited Partnership (the "Mountain View
13 Family Partnership Agreement").

14 59. Pursuant to Section 8.20 of the Mountain View Partnership Agreement,
15 D.A.S.H. has a Buyout Option allowing it to purchase Midland VII and Midland Special
16 Limited Partner, Inc.'s (or BFIM as its successor) entire interests in Mountain View Family.

17 60. Pursuant to Section 8.20(b), D.A.S.H. may exercise this Buyout Option after
18 expiration of the Compliance Period and for a period of one (1) year thereafter (the "Mountain
19 View Family Option Period").

20 61. The Compliance Period for Mountain View Family ended on December 31,
21 2016.

1 62. D.A.S.H. exercised its Buyout Option during the Mountain View Family Option
2 Period.

3
4 **C. D.A.S.H.'s Buyout Options and Buyout Notices.**

5 63. Sections 8.20(c) of the Kenmore Senior Partnership Agreement, Kenmore
6 Family Partnership Agreement, and Mountain View Family Partnership Agreement
7 (collectively these agreements are referred to hereafter as the "Partnership Agreements")
8 provide the mechanism to determine the price which D.A.S.H. is to pay to acquire the
9 Investment Partnerships' entire interest in the Apartment Complexes (the "Buyout Price").

10 64. Specifically, pursuant to Section 8.20(c) of the Partnership Agreements, the
11 Buyout Price "shall be the greater of (i) all federal, state and local taxes imposed on the
12 Investment Partnership attributable to the Buyout; or (ii) the fair market value (as of the date of
13 the closing of the Buyout) of the Investment Partnership's Interests as determined in
14 accordance with this Section 8.20."

15 65. Sections 8.20(e) of the Partnership Agreements provide that the value of the
16 Investment Partnerships' interests shall be determined by appraisals to "be performed by an
17 Accredited Senior Appraiser as certified by the American Society of Appraisers and acceptable
18 to the Investment Partnership (an 'ASA Appraiser') or an MAI certified real estate appraiser
19 acceptable to the Investment Partnership (an 'MAI Appraiser')."

20 66. Before D.A.S.H. may submit Buyout Notices under Section 8.20 of the
21 Partnership Agreements, it must propose, through written submission, two appraisers (both
22 shall be either an ASA Appraiser or an MAI Appraiser or both) to the Investments Partnerships
23
24
25

1 and the Investment Partnerships must approve one or both of the proposed appraisers within
2 five (5) business days of the written submission.

3 67. Attached as **Exhibit D** is a true and correct copy, without enclosures, of
4 D.A.S.H.'s written submission, dated October 10, 2017, proposing two appraisers pursuant to
5 Section 8.20(e) of the Kenmore Senior Partnership Agreement.
6

7 68. Attached as **Exhibit E** is a true and correct copy, without enclosures, of
8 D.A.S.H.'s written submission, dated October 10, 2017, proposing two appraisers pursuant to
9 Section 8.20(e) of the Kenmore Family Partnership Agreement.

10 69. Attached as **Exhibit F** is a true and correct copy, without enclosures, of
11 D.A.S.H.'s written submission, dated October 10, 2017, proposing two appraisers pursuant to
12 Section 8.20(e) of the Mountain View Family Partnership Agreement.
13

14 70. Following receipt of D.A.S.H.'s written submissions, the Investment
15 Partnerships approved Ben Wilcox, Wilcox LaMotte Valuation & Advisory, LLC, to perform
16 appraisals of the value of the Investment Partnerships' interests in the Partnerships.

17 71. Section 8.20(f) of the Partnership Agreements, entitled "Appraisal Process,"
18 directs the appraiser (here Mr. Wilcox), when determining the fair market value of the
19 Investment Partnerships' interests in the Partnerships, to consider the value of the Partnerships'
20 assets and give due consideration to all other relevant factors relating to the value of the
21 Investment Partnerships' interests, including but not limited to several specific considerations.
22

23 72. After the Investment Partnerships approved Mr. Wilcox to perform an appraisal
24 of the fair market value of the Investment Partnerships' entire interests in the Partnerships,
25

1 Mr. Wilcox performed his appraisals of the Investment Partnerships' entire interests in the
2 Partnerships and delivered detailed reports to D.A.S.H.

3 73. According to the appraisals, the fair market value of the Investment
4 Partnerships' entire interests in the Partnerships are as follows:

- 5 a. Kenmore Senior = \$0.00;
- 6 b. Kenmore Family = \$0.00; and
- 7 c. Mountain View Family = \$9,000.00.

8 74. Pursuant to Sections 8.20(d) of the Partnership Agreements, D.A.S.H. then
9 exercised its Buyout Options, through Buyout Notices, under the Partnership Agreements in
10 compliance with the terms and conditions of the Partnership Agreements, and D.A.S.H. advised
11 the Investment Partnerships that it would close on its acquisition of the Investment
12 Partnerships' interests on March 9, 2018.

13 75. Attached as **Exhibit G** is a true and correct copy, without enclosures, of
14 D.A.S.H.'s Buyout Notice, dated December 15, 2017, pursuant to Section 8.20(d) of the
15 Kenmore Senior Partnership Agreement.

16 76. Attached as **Exhibit H** is a true and correct copy, without enclosures, of
17 D.A.S.H.'s Buyout Notice, dated December 15, 2017, pursuant to Section 8.20(d) of the
18 Kenmore Family Partnership Agreement.

19 77. Attached as **Exhibit I** is a true and correct copy, without enclosures, of
20 D.A.S.H.'s Buyout Notice, dated December 15, 2017, pursuant to Section 8.20(d) of the
21 Mountain View Family Partnership Agreement.

D. The Investment Partnerships' Breaches and Anticipatory Breaches of the Partnership Agreements.

78. Pursuant to Sections 8.20(d) of the Partnership Agreements, if D.A.S.H.'s Buyout Notices include "appraisals or calculations which, in the reasonable opinion of the Investment Partnership, contain material errors, the notice shall not constitute an effective Buyout Notice" but the Investment Partnership has an affirmative obligation to allow D.A.S.H. to cure such alleged material errors and is required to "promptly so notify" D.A.S.H. of the material errors so that D.A.S.H. may submit a new or amended Buyout Notice during the Option Period.

79. When D.A.S.H. delivered its Buyout Notices to the Investment Partnerships, it requested "prompt consultation" with the Investment Partnership in order to, among other things, receive from the Investment Partnership any identification of alleged material errors so that D.A.S.H. could cure the same in the event that the Investment Partnership believed there were any material errors and wanted to comply with the Partnership Agreement by providing prompt notice to D.A.S.H.

80. In response, the Investment Partnerships rejected D.A.S.H.'s request, did not specify or identify any material errors, did not provide D.A.S.H. with any opportunity to cure any alleged material errors during the Option Period, and have indicated that they will not sell their interests in the Partnerships to D.A.S.H. as required by the Partnership Agreement and Buyout Notices.

81. Rather, in response and to date, all that the Investment Partnerships have said in response to D.A.S.H.'s Buyout Notices is that they "do not agree with the valuation of the

1 Investment Partnership's interest" and that they would respond within the first three weeks of
2 January (which the Investment Partnerships have not done). Attached as **Exhibits J, K and L**
3 are true and correct copies of the Investment Partnerships' responses to D.A.S.H.'s Buyout
4 Notices.

5 82. D.A.S.H.'s Buyout Notices are proper, valid, effective and enforceable, and
6
7 there are no material errors in the appraisals or calculations included or contained within the
8 Buyout Notices.

9 83. D.A.S.H. is entitled to close on the Buyout Notices and acquire the Investment
10 Partnerships' entire interests in the Partnerships as provided by Section 8.20 of the Partnership
11 Agreements, but the Investment Partnerships will not transfer their interests to D.A.S.H. as
12 required.

13 **III. COUNT I—BREACH OF CONTRACT**

14
15 84. D.A.S.H. fully incorporates the above paragraphs by reference as if fully stated
16 herein.

17 85. The Partnership Agreements are valid and binding contracts.

18 86. The Partnership Agreements include Buyout Options, for which D.A.S.H.
19 provided sufficient consideration.

20 87. D.A.S.H. complied with the Partnership Agreements, specifically Sections 8.20
21 thereof, and exercised its Buyout Options thereby creating a contract for the sale of the
22 Investment Partnerships' entire interests in the Partnerships to D.A.S.H.

23
24 88. The Investment Partnerships have breached their contractual obligations to
25 D.A.S.H.

1 89. D.A.S.H. is entitled to, among other things, an order for specific performance
2 requiring the Investment Partnerships to sell their interests in the Partnerships to D.A.S.H. as
3 set-forth in the Buyout Notices.

4 90. D.A.S.H. is entitled to recover any damages it incurs due to the Investment
5 Partnerships' breaches of the Partnership Agreements.
6

7 **IV. COUNT II—ANTICIPATORY BREACH OF CONTRACT**

8 91. D.A.S.H. fully incorporates the above paragraphs by reference as if fully stated
9 herein.

10 92. The Partnership Agreements are valid and binding contracts.

11 93. The Partnership Agreements include Buyout Options, for which D.A.S.H.
12 provided sufficient consideration.
13

14 94. D.A.S.H. complied with the Partnership Agreements, specifically Sections 8.20
15 thereof, and exercised its Buyout Options thereby creating a contract for the sale of the
16 Investment Partnerships' entire interests in the Partnerships to D.A.S.H.

17 95. The Investment Partnerships have anticipatorily breached their contractual
18 obligations to sell their interests to D.A.S.H. through, among other things, their responses to
19 D.A.S.H.'s Buyout Notices; and also by indicating that they will not sell their interests to
20 D.A.S.H. as required by the Buyout Notices, and suggesting that they will provide, or identify,
21 alleged material errors in the appraisals or calculations contained within the Buyout Notices in
22 a manner that is not prompt and follows expiration of the Option Period.
23
24
25

1 96. D.A.S.H. is entitled to, among other things, an order for specific performance
2 requiring the Investment Partnerships to sell their interests in the Partnerships to D.A.S.H. as
3 set-forth in the Buyout Notices.

4 97. D.A.S.H. is entitled to recover any damages it incurs due to the Investment
5 Partnerships' anticipatory breaches of the Partnership Agreements.
6

7 **V. COUNT III—EQUITABLE CLAIMS**

8 98. D.A.S.H. fully incorporates the above paragraphs by reference as if fully stated
9 herein.

10 99. The Investment Partnerships have waived any right to identify or specify any
11 alleged material errors in the appraisals or calculations contained in D.A.S.H.'s Buyout Notices
12 because, in part: (a) they knowingly failed to do so in response to the Buyout Notices;
13 (b) knowingly failed to do so during the Option Period; (c) have knowingly failed to do so as
14 stated; and (d) they have not promptly identified any alleged material errors.
15

16 100. The Investment Partnerships should be estopped, both through equitable
17 estoppel and promissory estoppel, from identifying or specifying any alleged material errors in
18 the appraisals or calculations contained in D.A.S.H.'s Buyout Notices because, in part, they
19 have failed to do so during the Option Period and have not done so since, and allowing the
20 Investment Partnerships to do so now will be unjust and unfair to D.A.S.H. and could serve to
21 prevent D.A.S.H. from closing on its Buyout Options as stated in the Buyout Notices.
22

23 101. D.A.S.H. is entitled to, among other things, an order for specific performance
24 requiring the Investment Partnerships to sell their interests in the Partnerships to D.A.S.H. as
25 set-forth in the Buyout Notices.

1 102. D.A.S.H. is entitled to recover any damages it incurs due to the Investment
2 Partnerships' anticipatory breaches of the Partnership Agreements.

3 **VI. COUNT IV—DECLARATORY JUDGMENT**

4 103. D.A.S.H. fully incorporates the above paragraphs by reference as if fully stated
5 herein.

6 104. An actual controversy exists as to the Buyout Notices, specifically concerning
7 the appraisals or calculations contained therein, and D.A.S.H.'s right to acquire the Investment
8 Partnerships' interests in the Partnerships pursuant to the Buyout Notices.

9 105. The Partnership Agreements are valid and binding contracts.

10 106. The Partnership Agreements include Buyout Options, for which D.A.S.H.
11 provided sufficient consideration.

12 107. D.A.S.H. complied with the Partnership Agreements, specifically Sections 8.20
13 thereof, and exercised its Buyout Options thereby creating a contract for the sale of the
14 Investment Partnerships' entire interests in the Partnerships to D.A.S.H.

15 108. There are no material errors in the appraisals or calculations contained within
16 the Buyout Notices, but the Investment Partnerships have stated that they do not agree with the
17 valuation of their interests and indicated that they will not sell their interests to D.A.S.H.
18 pursuant to the Buyout Notices.

19 109. D.A.S.H. is entitled to a declaration, pursuant to 28 U.S.C. § 2201(a), as
20 follows:

21 a. D.A.S.H.'s exercise of its Buyout Options is valid, effective and
22 enforceable; and
23
24
25

b. the Investment Partnerships must sell, pursuant to the Buyout Notices, their entire interests in the Partnerships to D.A.S.H.

VII. JURY DEMAND

D.A.S.H. respectfully demands a jury on all issues so triable.

VIII. PRAYER FOR RELIEF

WHEREFORE, D.A.S.H. respectfully prays for the following relief:

1. That the Court order specific performance by the Investment Partnerships, pursuant to Section 8.20 of the Partnership Agreements, to sell their entire interests to D.A.S.H. as set-forth in D.A.S.H.'s Buyout Notices;

2. That the Court issue a declaration that:

a. D.A.S.H.'s exercise of its Buyout Options is valid, effective and enforceable; and

b. the Investment Partnerships must sell, pursuant to the Buyout Notices, their entire interests in the Partnerships to D.A.S.H.

3. That the Court order such other and further relief, including, without limitation, monetary relief and attorneys' fees and costs, which the Court may deem just, equitable and appropriate under the circumstances presented.

///

///

///

///

///

1 Respectfully submitted January 30, 2018.

2 PETERSON RUSSELL KELLY PLLC

3 By /s/ Michael T. Callan
4 Michael T. Callan, WSBA # 16237

5 Peterson Russell Kelly PLLC
6 10900 NE 4th Street, Suite 1850
7 Bellevue, WA 98004-8341
8 Ph: (425) 462-4700
9 Email: mcallan@prklaw.com
Attorneys for Plaintiff
Downtown Action to Save Housing

10 WINTHROP & WEINSTINE, P.A.

11 David A. Davenport, MN Bar No.: 285109
12 Quin C. Seiler, MN Bar. No: 396699
13 225 South Sixth Street, Suite 3500
14 Minneapolis, MN 55402
15 Ph: (612) 604-6716
16 Email:
ddavenport@winthrop.com
qseiler@winthrop.com

17 Attorneys for Plaintiff
18 Downtown Action to Save Housing

19 *Pro Hac Vice Applications Pending*
20
21
22
23
24
25